



GUIDANCE NOTE 23

The European Company

This publication is a brief introduction to the main features of a European Company. It has been possible to set up a European Public Limited Liability Company (a Societas Europaea), in Gibraltar since 31 March 2005 under the European Public Limited-Liability Company Act 2005 (the "Act")

What is a Societas Europaea?

The European Company Statute (Council Regulation (EC) No 2157/2001 (the "Regulation") created a new form of company – the European Company or Societas Europaea. This type of company is available to commercial bodies with operations in more than one Member State. Its use will be entirely voluntary. It may be created on registration in any Member State of the European Economic Area. An SE that has been formed and registered in one Member State may subsequently transfer its registration to any other Member State.

Name of the SE

The name of an SE must be followed or preceded by the abbreviation SE. Other company type designators cannot be used by an SE. This means that an SE may not include anywhere in its name any of the following:

- "limited", "unlimited", "public limited company", or any abbreviation of those words or expressions;
- "investment company with variable capital" or "open-ended investment company" or their Welsh equivalents;
- "limited liability partnership".

When an SE transfers its place of business to Gibraltar it may keep its name of origin unless the Registrar requires it to change its name to comply with the rules in Gibraltar on company names.

Formation of an SE

The Act provides for four possible ways of creating an SE:

1. By merger of national companies from different member states;
2. By the creation of a holding SE as a joint venture between companies in different member states;
3. By the creation of an SE subsidiary of a national company;
4. By the conversion of a national public limited liability company to an SE.

1. Formation by Merger

Two or more Public Limited Liability companies as defined in the Directive may form an SE by means of a merger provided that at least two of them have registered officers in different EU jurisdictions. The merger may be conducted by acquisition (with the acquiring company becoming an SE) or by the formation of a new company (with the merging companies ceasing to exist).

2. Formation of a Holding SE

Two or more public and or private limited companies (including existing SEs) formed under the law of a Member State and with a registered office in a Member State may form an SE by promoting the formation of a holding SE. The companies promoting the formation must become majority-owned by the SE, and at least two of them must be:

- (a) governed by the laws of a different Member State; or
- (b) have had, for at least two years, a subsidiary company governed by the laws of another Member State; or
- (c) had a branch in another Member State.

3. Formation of a Subsidiary SE

Two or more companies, firms, or other legal bodies formed under the law of a Member State, with registered offices and head offices within the Community, may form an SE by subscribing for its shares. At least two of the companies or firms must be:

- (a) governed by the laws of a different Member State; or
- (b) have had, for at least two years, a subsidiary company governed by the laws of another Member State; or
- (c) had a branch in another Member State.

4. Formation by Transformation of a PLC

A public limited-liability company, formed under the law of a Member State, which has its registered office and head office within the Community may be transformed into an SE if for at least two years it has had a subsidiary company governed by the law of another Member State. The PLC cannot simultaneously transform to an SE and move its registered office to another Member State. This process does not involve the winding up of the PLC or the creation of a new legal person in the form of an SE.

Formalities of Incorporation

The formalities for incorporation will depend on which of the four choices for forming an SE is followed. The appropriate forms may be down loaded from our website. Article 15 of Council Regulation (EC) No 2157/2001 of the 8th October 2001 states that the formation of an SE shall be governed by the law applicable to public liability companies in the Member State subject to the variation introduced by the said regulations.

The Act provides for a series of forms to be used on incorporation or registration of an SE.

Minimum Share Capital

An SE must have a minimum share capital of 120,000

Annual Accounts and Consolidated Accounts

An SE shall be governed by the rules applicable to public Limited Companies under the law of the Member State in which it is registered.

Notice of Registration

Notice of the Registration of an SE must also be published in Official Journal of the European Communities after publication in the Member State. See Directive 68/151/EC.

Worker Participation

One of the fundamental characteristics of an SE is the degree of employee participation in the Company. The Regulation is complemented by the Council Directive on Employee Participation, which establishes rules on worker involvement in the management of the SE. Employee participation does not mean participation in the day-to-day decisions of the company, which are a matter for the management, but participation in the supervision and strategic development of the company. Because there exist different traditions of worker

involvement within EU Member States, the Directive contains a compromise, allowing a company to be formed with one of two systems.

1. a two tier system involving a supervisory organ and a management organ (articles 39 to 42).
2. a one tier system comprising an administrative organ (articles 43 to 45)

The law of Gibraltar allows the proposed company to choose either structure. It is up to each EU country to adopt either of the two systems or allow a choice between the two. It pays to carefully understand the choices available and its implications.

Migration of an SE

A procedure exists whereby the registered office of an SE may be transferred without having to wind-up the company or to create a new legal entity. This introduces the concept of re-domiciliation to EU countries that did not provide for it.

Effect

An SE may be created on registration in any one of the Member States of the European Economic Area (EEA). Article 10 of the Regulations requires Member States to treat an SE as if it is a public limited company formed in accordance with the law of the Member State in which it has its registered office.

- **Payment Method**

UK clearing cheques should be made payable to Companies House Gibraltar

- **Guidance only**

This Circular is intended for general guidance only. Companies House Gibraltar does not assume legal responsibility for the accuracy of any particular statement. In the case of a specific problem, we recommend that you seek professional advice.

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